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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : 09-CR-377 (JBW)

-against- : U.S. Courthouse

EDWARD STEIN : Brooklyn, New York

Defendant : February 9, 2010

- - - - - X 2:00 p.m.

BEFORE:

HONORABLE JACK B. WEINSTEIN
United States District Judge

APPEARANCES:

For the Government: BENTON J. CAMPBELL, ESQUIRE
United States Attorney
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Brooklyn, New York 11201
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8 BY: MELVIN R. McVAY, JR.

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11 3 World Financial Center
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13 Court Reporter: RONALD E. TOLKIN, RMR, CRR
14 Official Court Reporter
15 225 Cadman Plaza East
16 Brooklyn, New York 11201
17 718-613-2647

18 * * *

19 THE COURT: Sit down everyone.

20 Good afternoon everyone.

21 THE CLERK: Criminal cause for sentencing, United
22 States of America versus Edward Stein.

23 Counsel, note your appearances, please.

24 For the United States?

25 MR. KLUGMAN: Good afternoon, Your Honor.

1 Scott Klugman for the United States. Let me list
2 everyone who is here. Winston Paes is another prosecutor in
3 my office. Special Agent Michael Burgwald of the Federal
4 Bureau of Investigation is present. Ariel Werner, who is a
5 paralegal in my office.

6 Also, the Receiver and Receiver's counsel is here in
7 case there are questions. The Receiver is Thomas Moran.
8 Melvin McVay is the attorney.

9 The SEC attorneys who are responsible for the civil
10 case are here, Nancy Brown and Steve Larson.

11 I'll let the probation officer give her appearance.

12 THE CLERK: Give your name, Probation.

13 PROBATION OFFICER: Michelle Espinosa for the
14 probation department.

15 Good afternoon, Your Honor.

16 THE COURT: Good afternoon.

17 MR. MAAS: Good afternoon, Your Honor.

18 For the defendant Edward Stein, Brian Maas. I am
19 accompanied by Lia Brooks and John Schowengerdt.

20 Mr. Stein is here, Your Honor, prepared to proceed.

21 THE COURT: Thank you.

22 All right. Will the case coordinator, June Lowe,
23 read the documents that are now before the Court to ensure
24 that I have everything that has been sent.

25 THE CLERK: The court has received a letter dated

1 August 13th, 2009 from Barry and Helen Clateman; a letter
2 dated August 23rd, 2009, from Mr. and Mrs. Robert Geoghegan;
3 letter dated October 5th, 2009, from Rita Clark, M.D.; an
4 e-mail dated October 29th, 2009, sent from
5 CentralPark35@aol.com, the person didn't sign their name; a
6 letter dated October 30th, 2009, from Sebastian and Lorrain
7 Riccioli; letter dated October 17th, 2009, the person wishes
8 to remain anonymous; a letter dated November 11th, 2009, from
9 Alan Weiss, M.D.; letter dated January 8, 2010, from Harvey
10 Weiner, Ph.D.; letter dated January 27th, 2010, from Carolyn
11 Gilson; letter dated January 14th, it says 2009, from Leslie
12 and Erich Bennett; letter dated January 22nd, 2010, from Ellen
13 Klaffy; letter dated January 25th, 2009, from James, Joshua,
14 Jessica and Jason Prince; letter dated -- actually, fax dated
15 February 8th from Mrs. Andrew Young.

16 Also marked in the proceeding is the transcript of
17 June 22nd, 2009 plea; the probation department's presentence
18 investigation report dated December 29th, 2009; the revised
19 U.S. Probation Department sentence recommendation dated
20 February 8th, 2009; the addendum to the PSR dated February 9,
21 2010; defendant's objections to the presentence investigation
22 report; the defendant's memorandum in aid of sentence,
23 including an appendix containing forty letters in support of
24 defendant Edward Stein; letter dated February 3rd, 2010 from
25 assistant U.S. attorneys Klugman and Paes in response to the

1 defendants objection to the PSR; the defendant's reply
2 memorandum in further support of his objections to the
3 presentence report and his memorandum in aid of sentencing.

4 Has anyone made a submission whose name was not
5 called?

6 (Arm raised.)

7 THE COURT: Yes. Come up, please.

8 MR. KLUGMAN: I have a copy of the letter but not
9 with me here.

10 MS. ANDERSON: I may have a copy.

11 THE COURT: Will you submit another copy, please, if
12 you have a copy.

13 MS. ANDERSON: I'll check.

14 THE COURT: Let me have a copy now, if the writer
15 has a copy with her?

16 MR. KLUGMAN: I can forward it to somebody's e-mail
17 address, I think.

18 MS. ANDERSON: The original letter was sent in
19 August. Shelly Anderson.

20 THE CLERK: We have it. She asked to remain
21 anonymous.

22 THE COURT: We have your letter, Madam.

23 MR. KLUGMAN: I see.

24 MS. KOTLER: My husband mailed one in.

25 MR. KLUGMAN: To probation or to the court?

1 MS. KOTLER: To probation.

2 THE COURT: Do we have it?

3 PROBATION OFFICER: I don't have the actual letter,
4 but it was summarized in the addendum.

5 THE COURT: We have your letter summarized by
6 probation.

7 Is that satisfactory to you, Madam?

8 MS. KOTLER: K-O-T-L-E-R.

9 THE COURT: I understand there are some of the
10 victims who wish to be heard.

11 MR. KLUGMAN: Yes, Your Honor. The government
12 provided a list to the court's deputy.

13 THE COURT: The deputy will read the names one at a
14 time. You may come forward and sit up here where Ms. Lowe is,
15 and I'll hear you.

16 THE CLERK: Caroyln Gilson. C-A-R-O-L-Y-N,
17 G-I-L-S-O-N.

18 MS. Gilson: Good afternoon, Your Honor. My name is
19 Carolyn Gilson and I'm Victim One in Count Five of this case.
20 I am the biggest victim and, as far as I know, the only one
21 that never invested in Mr. Stein's company. Instead,
22 Mr. Stein simply stole my money.

23 I met Mr. Stein when he began dating Bonnie Walker,
24 a friend I have known since high school. My husband and I saw
25 them frequently, invited him to our home for holidays and

1 vacationed together.

2 Ed took advantage of this close personal
3 relationship and through forged documents, fraudulent wire
4 transfers and phoney bank accounts opened without my
5 knowledge, stole more than \$10 million from me beginning in
6 May 2008 within weeks of the deaths of my parents.

7 I'm an only child with no children of my own. My
8 father worked hard all his life to provide me with security.
9 Mr. Stein has taken that away and, in the process, changed my
10 life forever. He used the fact that after losing both my
11 parents within three months, I was overwhelmed and began to
12 prey on me.

13 I understand that some of Mr. Stein's supporters
14 said that he was someone who did not live extravagantly and
15 has been described as a good and selfless man. His own
16 sentencing memorandum claims that he acted out of desperation
17 and circumstance when defrauding his victims. Before his
18 betrayal, I considered this man a good friend. So I wish that
19 I could say this is true, but I have firsthand knowledge that
20 it is not.

21 Mr. Stein was not acting out of desperation and
22 circumstance when he stole with fraudulent wire transfers over
23 a million dollars from me to close on an luxurious Upper East
24 Side apartment.

25 Mr. Stein was not acting out of desperation and

1 circumstance when he used my money to pay for a \$9,000 a month
2 ocean front condo in Miami that he rented for the winter.

3 Mr. Stein was also not acting out of desperation and
4 circumstance when shortly after stealing the first \$3 million
5 from me in May 2008, he and his girlfriend joined us on our
6 vacation in Iceland where he rented the largest penthouse
7 suite in the hotel.

8 And after flying to Miami to spend New Year's Eve
9 with us that year, he transferred another \$100,000 out of my
10 account with yet another forged wire transfer.

11 During the several years we knew Mr. Stein, we also
12 traveled to Italy with him staying at a villa in Tuscany he
13 rented through an auction for Bonnie's Charity.

14 In Rome and Florence we stayed in first class hotels
15 with Mr. Stein always booking himself the more expensive
16 suites.

17 He also bragged to us about helping his girlfriend's
18 son with student loans and about the furnishings he bought for
19 his new apartment, including expensive handmade bed linens
20 which he said were so expensive he was afraid to sleep on
21 them.

22 When Mr. Stein pled guilty, he said that he was
23 working to repay his investors. What he failed to mention is
24 he paid many of them with money he stole from me. Mr. Stein
25 said he is ashamed. I believe he is a shameless predator.

1 He continued to steal from me after the initial
2 meeting with the SEC and until shortly before his arrest. He
3 even sent my money to his attorney's law firm to pay off a
4 \$350,000 debt for an unrelated bankruptcy proceeding, and
5 wired additional funds to the firm to apparently pay
6 additional expenses related to his defense.

7 The damage he has done to my life, as well as his
8 other victims, is irreparable. I believe he deserves the same
9 consideration he showed me, none, and to receive the maximum
10 sentence allowed.

11 And I believe he should be remanded today. I'm sure
12 whatever alleged deal he is working on can be completed with
13 him behind bars.

14 Thank you for allowing me to tell my story.

15 THE CLERK: Gwen Kutler.

16 MS. KUTLER: I will pass.

17 THE CLERK: Donald and Ann Kahn.

18 Pleased be seated, and state and spell your name for
19 the record.

20 MR. KAHN: Donald Kahn, K-A-H-N.

21 THE CLERK: Speak into the microphone.

22 MR. KAHN: As I sit here before many people I've
23 known for a long time, I'm overcome with feelings I can't
24 describe. It was difficult to make the decision to get up
25 here. I feel sorry for his family, but he hurt me and my

1 family, which is why I decided to speak about personal
2 betrayal.

3 In terms of investments, I know there are any plenty
4 of people who lost more money than me. I always felt lucky to
5 be associated with him because he seemed to be smart,
6 well-connected, and most of all, said he was my friend and
7 going to watch out for me. I never was concerned about
8 investing money because he and I were close, and although
9 markets would go up and down, he would never intentionally
10 hurt me. Nothing could be further from the truth.

11 I decided to make a written statement regarding our
12 financial and personal relationship with Ed Stein. There was
13 a question on the affidavit provided by the U.S. Department of
14 Probation regarding information relating to our losses
15 incurred.

16 How do you measure the depths of emotional injury?

17 Although it is not easy to reconstruct all the
18 financial investments and retirement funds placed in Ed
19 Stein's trust for over 30 years, it pales in comparison to the
20 emotional impact on our lives. We will suffer emotionally
21 from this for the rest of our lives, and for that I am deeply
22 angered.

23 I am angry that people like Ed Stein exist in the
24 world today. I am angry that I engaged him on a personal
25 level as a friend, confidant and someone I could count on.

1 How do you measure an emotional injury?

2 I am angry that I don't sleep well. I am angry that
3 money we designated for our children's marriages are no longer
4 at our disposal. I am angry that he could look me in the eye
5 on March 31st, 2009, and tell me everything was okay.

6 My anger and anxiety is not something that will
7 easily be reconciled, as well as our financial standing. My
8 wife, Ann, is no longer working due to health problems which
9 is exacerbated by the stress and emotionality of this event.

10 At 59 years of age and after 32 years of providing
11 dental care, I thought that I could be reducing my hours and
12 reap the harvest of my labors. It angers me to no end that
13 the ability to make this decision has been taken away from me.

14 Emotional injury? My wife suffers more with her
15 disability because of Ed Stein. How do you measure that?

16 I'm hoping that the post traumatic stress we are
17 suffering will reduce over time, although the anger is
18 something we will hold inside of us for the rest of our lives.

19 MS. KAHN: My name is Ann Kahn, A-N-N, K-A-H-N.

20 We've spent countless hours, painful hours,
21 reconstructing our financial history with Ed Stein, which
22 dates back probably 33 years. The loss that we've suffered
23 due to him is inexplicable. The breadth of it goes far beyond
24 what mere words can describe. The pain related to this
25 experience is most obviously our monetary loss; however, it

1 flows into our personal and emotional lives with a depth that
2 is incomprehensible.

3 Since his criminal actions were revealed, there is
4 not an idle hour that goes by that this experience does not
5 dominate our thoughts. Over time, we let him into every
6 aspect of our lives thinking he was a dear friend. And he
7 betrayed us. He immersed himself in every aspect of our
8 financial, business and personal life. We can not imagine, in
9 our wildest dreams, that he could be so fraudulent and
10 perverse.

11 Since last April when we discovered what Ed Stein
12 had done to us, we suffered emotionally and felt a great sense
13 of loss. It leaves me with a recurring fear wondering what
14 else could be lost. If somebody that we trusted and were
15 involved with was so closely with was involved in such a
16 heinous act, what else can be taken from us and by whom?
17 Someone that we trusted, believed him to be working with us on
18 our behalf, was stealing from us. How can one trust again?

19 Edward Stein's criminal actions have severely
20 altered our future. What we worked for, so hard for, what we
21 planned for, saved for and looked so forward to, he forever
22 change the picture of our hopes and our dreams.

23 He has been known to say oh, you worry too much
24 about your future. You're fine. One would think that if he
25 were someone with a conscience, he would have been brought

1 back to center if he had one. Ed Stein obviously had no
2 conscience. And hopefully, now, will be made to realize and
3 to live the experience -- and live to experience the
4 consequence of his actions.

5 Being a person with a moral standard, it's hard for
6 me to wrap my head around the fact that somebody we trusted
7 and considered a valued person in our life could be stealing
8 our life savings.

9 During every meeting with him, and there were many,
10 he looked us straight in the eye and assured us that our
11 savings and well invested and safe. Now, in addition to
12 having to restructure our financial future, we have the
13 recurring nightmare of handing over all of our retirement
14 funds to him.

15 Generally, I worry about my husband reliving this
16 nightmare, and the emotional and psychological effects of this
17 outrageous betrayal. As a result of Ed Stein's criminal act,
18 I will be reinventing myself in the workplace and my husband
19 will be working far longer than he had ever planned.

20 He knew about my health situation. Nothing really
21 seemed to process or matter to him. Basically, I will see him
22 now as a person who only thought of himself and just
23 functioned at everybody else's expense. And after all these
24 years of knowing him, I regret the day that I ever met him.

25 THE COURT: Thank you.

1 THE CLERK: Adele Reshotnik.

2 Please be seated, and state and spell your name for
3 the record.

4 MS. RESHOTNIK: Adele Reshotnik. A-D-E-L-E,
5 R-E-S-H-O-T-N-I-K.

6 Good afternoon, Your Honor. This will be a very
7 brief statement.

8 Mr. Stein, the defendant, was introduced to us as a
9 very prominent trusting financial advisor. However, to our
10 surprise he has turned out to be a money hungry, evil, sly fox
11 who preyed on seniors like my husband and myself.

12 The defendant has robbed us of every dollar of our
13 401Ks and our retirement accounts; hence, we are now
14 penniless. He has completely ruined our lives, our children's
15 lives, and has deprived our grandchildren of their college
16 education.

17 My husband and I worked very hard. We saved and did
18 without any extras for many years so that we could enjoy our
19 golden years. As a matter of fact, we were to celebrate our
20 50th wedding anniversary on January 29, 2010, but could not
21 even afford to go out for dinner since we are virtually broke
22 and just skimming by.

23 In view of these heinous crimes that the defendant
24 committed, he deserves no less than the maximum sentence on
25 each count as set forth by the judicial system and should be

1 incarcerated today without any further delay.

2 Thank you.

3 THE COURT: Thank you.

4 THE CLERK: Shelly Anderson.

5 Please be seated, and state and spell your name for
6 the record.

7 MS. ANDERSON: Shelly Anderson. A-N-D-E-R-S-O-N.

8 I was -- am one of the victims of Ed Stein. That
9 when I originally met him in 2006, the purpose was not to make
10 money. It was to roll over my 401K, my pension fund, SEPs and
11 IRAs, and also some other stocks that went to Ameritrade and
12 Pershing.

13 What happened was he stole every penny of it, and he
14 stole it from the get go. When I met him I was a widow, which
15 he knew. My father had died. I had had surgery and had been
16 hospitalized for about -- prior to meeting him, for about 11
17 days.

18 At the time that I met him, my mother had died,
19 actually, right at that time and I had lost my job of 25
20 years. That's actually why I was referred to him to roll over
21 a lot of the money that I had at my place of employment.

22 He took everything. I had the advantage, or
23 disadvantage, when he was arrested, to get my records from
24 Ameritrade and Pershing to find out that he forged documents
25 over and over again. He forged wires. He moved money into

1 his own accounts.

2 Which I had no idea, I had no discussion and didn't
3 even know that Gemini and Vibrant, and whatever I'm reading
4 about now, was his. I had absolutely no idea. He knew I was
5 frightened, and had always been, about being destitute.
6 Particularly, it was enhanced by the time my husband of 21
7 years died unexpectedly.

8 I called him regularly worried about my money. He
9 was always reassuring me everything was safe. Obviously, the
10 records reflected -- actually, not that I was making money,
11 but really things seemed to be relatively safe, although I was
12 losing some. I thought maybe when Madoff was arrested, I
13 thought hopefully this was not a Madoff issue. I just started
14 to get suspicious.

15 I have to say, it feels like I've been raped. What
16 he did -- I mean, my only example that comes to mind is that I
17 feel like a carpet in the desert with a vulture just picking
18 out every little piece of me he could find, because he went
19 into every single account. Whether it was in a bank account
20 or in my 401K or SEP or IRAs, everything. And those, by the
21 way, were the only assets that I have to my name. And they're
22 gone.

23 I also, having lost my job of 25 years, am on my own
24 and am my sole employer. There's not a day that I don't worry
25 in terms of whether I will be able to continue to draw an

1 income and pay my bills.

2 I also had the opportunity, in 2008, to meet a
3 wonderful man. We hope to start a new life with a lot of hope
4 and happiness. It was then that Ed Stein was arrested and it
5 has changed the whole course of everything. I mean, it really
6 -- for both of us. It's affected our first year of marriage.
7 And it will continue to affect how we live and where we live
8 and what we do.

9 I worry about getting older. I'm 57. I'll be 58
10 this year. The thought of -- I mean, I will never be able to
11 get back what I lost. I didn't marry a man of means. I
12 married a wonderful man, but not a man of means. We are
13 really both devastated.

14 There is not a night that I don't try to go to sleep
15 without thinking of what happened. I wake up every night
16 around 3:00 or 4:00 in the morning thinking of what happened.
17 There is not a morning that I don't wake up thinking of what a
18 horrible, evil, malevolent person Mr. Stein is.

19 This stuff about him being kind, I think he is a
20 wolf in sheep's clothing. He really went right after my money
21 the minute I signed a few pieces of paper. I do have to say
22 again that I think what he did, the consequences are
23 devastating. They will be devastating throughout my entire
24 life, and also for my husband.

25 I really believe he should be remanded immediately.

1 The fact that he is allowed to walk around when he's
2 devastated so many people's lives, I think is just awful. So
3 I really hope he's remanded right away.

4 THE COURT: Thank you.

5 MS. RESHOTNIK: I really I don't know what to say in
6 terms he ever sentencing. I think he really deserves to be
7 away for a very very long time.

8 THE COURT: Thank you, Ms. Anderson.

9 THE CLERK: That's the last one.

10 THE COURT: Anybody else who wishes to speak?

11 Are there any witness that the government wishes to
12 present?

13 MR. KLUGMAN: I don't think, on the disputed
14 guidelines, there are any disputed facts.

15 THE COURT: Will the defendant be presenting any
16 witnesses?

17 MR. MAAS: No, Your Honor. We submitted our
18 sentencing submission with all of the letters, and we'll stand
19 on those submissions.

20 As Mr. Klugman says, on the guidelines issues, they
21 are legal issues. There are no factual issues.

22 THE COURT: Swear the defendant, please.

23 THE CLERK: Please stand and raise your right hand.

24 (Defendant sworn to tell the truth.)

25 THE DEFENDANT: Yes, I do.

1 THE CLERK: Give your name.

2 THE DEFENDANT: Edward Stein.

3 THE COURT: Do you require an interpreter, sir?

4 THE DEFENDANT: No.

5 THE COURT: Have you read and had explained to you
6 the presentence report and addendum?

7 THE DEFENDANT: Yes, I did.

8 THE COURT: Are you ready to be sentenced?

9 THE DEFENDANT: Yes.

10 THE COURT: Of what country are you a citizen?

11 THE DEFENDANT: United States.

12 THE COURT: Are you satisfied with your attorney?

13 THE DEFENDANT: Yes, I am.

14 THE COURT: Does the attorney have a conflict of
15 interest?

16 MR. MAAS: No, Your Honor.

17 THE COURT: Are there any unresolved motions or
18 contentions by either side?

19 MR. KLUGMAN: Other than those presented in the
20 sentencing papers, I don't believe there are any unresolvable.

21 THE COURT: Are you seeking a downward departure?

22 MR. MAAS: We are requesting a sentence below the
23 guidelines, but not a downward departure within the definition
24 of the guidelines themselves. But we are certainly seeking a
25 sentence below the guidelines, a departure from the

1 guidelines.

2 THE COURT: The government need anymore time?

3 MR. KLUGMAN: The government does not need anymore
4 time.

5 THE COURT: Anyone object to the video recording?

6 MR. MAAS: No objection.

7 THE COURT: Both sides used the proper guidelines
8 manual?

9 MR. KLUGMAN: There is an agreement on the
10 guidelines manual. It is the current one. I don't think that
11 it would have changed.

12 MR. MAAS: There is agreement.

13 THE COURT: The Court has observed the defendant's
14 demeanor. He appears to be capable of understanding the
15 proceeding.

16 Does counsel agree?

17 MR. MAAS: Yes, Your Honor.

18 THE COURT: Has the government contacted all known
19 victims and informed them of their right to be heard?

20 MR. KLUGMAN: Yes, Your Honor.

21 THE COURT: Have you read the minutes of the plea?

22 MR. MAAS: I've reviewed them with Mr. Stein.

23 THE COURT: Are they accurate?

24 MR. MAAS: Yes, they are.

25 THE COURT: Mr. Stein?

1 THE DEFENDANT: Yes, they are.

2 THE COURT: Does everything that you say in there
3 constitute the truth?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Were there any threats or promises that
6 induced you to say what you said?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Do you have still wish to plead guilty?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: How do you plead, guilty or not guilty
11 to the counts?

12 THE DEFENDANT: I'm sorry, Your Honor?

13 THE COURT: How do you plead, guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: Based on the information before me, I
16 accept the plea.

17 Do you wish a Fatico hearing?

18 MR. MAAS: No.

19 THE COURT: On the facts, do you wish a hearing?

20 MR. MAAS: No.

21 THE COURT: Do you wish a jury trial on any issues?

22 MR. MAAS: No, Your Honor.

23 THE COURT: The defendant may address the Court, his
24 counsel will address the Court. The defendant may have
25 witnesses on his behalf.

1 Do you wish to contest anything in the presentence
2 report?

3 MR. MAAS: Your Honor, we have challenged --
4 initially we challenged two of the guidelines calculations.
5 Two of the guideline positions that the probation department
6 had taken. One of them had to do with the loss calculation,
7 but since our objection was filed, the government and the
8 probation department have concurred that the proper loss
9 number is the 20 million to \$50 million range. So with
10 respect to that dispute, I believe there is no longer a
11 dispute as to that.

12 The second issue that we raised had to do with the
13 position taken in the presentence report that Mr. Stein was
14 eligible for the four point enhancement as an investment
15 adviser. We submitted to Your Honor our brief explaining to
16 Your Honor why Mr. Stein's conduct does not qualify as conduct
17 of an investment advisor.

18 Mr. Stein was not in a position with respect to
19 these victims where he exercised the sort of discretion that
20 investment advisors have. He was not compensated for the
21 advise. To the extent that there was any investment advise
22 given, that's not what he was compensated for.

23 And as we've presented, the investment advisor
24 enhancement, which was added in the 2003 amendment was
25 specifically added after the securities market scandals of the

1 early part of the decade to deal with investment advisors
2 themselves and take them out of the abuse of trust two point
3 enhancement and create a special enhancement geared towards
4 investment advisors or broker dealers, as the case may be.

5 Mr. Stein was neither of those things. He ran these
6 investment funds as a manager of the funds. He's admitted to
7 it, as Your Honor knows, misused people's funds. That is the
8 crime that he plead guilty to. That is the crime that the
9 guidelines base offense level and enhancement for loss cover.

10 There is nothing about his conduct which would make
11 him eligible for the four point enhancement.

12 THE COURT: What is the government's view?

13 MR. KLUGMAN: The government's view is he qualifies
14 for the four point investment advisor enhancement. Actually,
15 Your Honor, I don't think is a close call. If he doesn't, I'm
16 not sure who would. Essentially, the Gemini fund was a Hedge
17 Fund.

18 THE COURT: You insist on the four point
19 enhancement.

20 MR. KLUGMAN: Yes.

21 THE COURT: I find in favor of the government, he
22 have acted as an investor. We now have witnesses on the stand
23 and adequate information supporting the government's position.

24 MR. MAAS: Your Honor, we cited to Your Honor the
25 decision of Judge Marrero in the Southern District in a case

1 almost identical to this in which he reviewed the purposes of
2 the four point enhancement and found that someone who runs --
3 who is guilty of the type of crimes that Mr. Stein committed,
4 basically stealing people's money, is not -- does not become
5 an investment advisor for the sole purpose of that four point
6 enhancement.

7 He had access to people's money and he misused that
8 access. But investment advisor is a technical concept under
9 the Investment Advisor Act. And here, Mr. Stein's conduct
10 doesn't meet the indicia of an investment advisor.

11 The government's position that it's not a close
12 case, it is, in fact, a situation where the guidelines end up
13 being exaggerated if that four point enhancement is layered on
14 the other calculations that go into the guidelines score in
15 this case.

16 THE COURT: The Court finds that he acted as an
17 advisor, an investment advisor, and deliberately misled his
18 clients who believed that he was a bona fide investment
19 advisor.

20 Are there any other findings and statements in the
21 presentence report that the defendant wishes to challenge?

22 MR. MAAS: No, Your Honor.

23 MR. KLUGMAN: Your Honor, there's just one other
24 minor change that needs to be made to the presentence report,
25 and there's an agreement on this. There is one victim who

1 needs to be added. The name of the victim -- Probation, we
2 discussed this prior to the proceeding today, the name of the
3 victim is Kappa Insurance Company. The loss amount is \$1
4 million even.

5 With that change made, the total loss amount under
6 the restitution column in Paragraph -- the charge in Paragraph
7 22 is \$46,396,373.08. It has no impact on the applicable
8 guideline range.

9 THE COURT: Probation will amend the addendum and
10 the report to indicate that, please.

11 PROBATION OFFICER: Yes, Your Honor.

12 THE COURT: No objection.

13 Any other objections or changes you wish in the
14 presentence report?

15 MR. MAAS: None from the defense, Your Honor.

16 THE COURT: Then it is adopted. Paragraph 41, base
17 offense level 7, 42. Total loss \$46,396,373.08, 22 points.
18 Acceptance of responsibility, minus three.

19 Total offense level is 36, is that correct?

20 MR. KLUGMAN: Yes, Your Honor.

21 MR. MAAS: Yes, Your Honor, with the four point
22 enhancement it is.

23 THE COURT: According to the guidelines, then, the
24 range of imprisonment is 188 to 235 months. The fine range is
25 20,000 to 200,000. The restitution amount is \$46,396,373.08.

1 Is that correct.

2 MR. MAAS: That is correct, Your Honor.

3 THE COURT: The Court so finds.

4 The special assessment is \$500, correct?

5 MR. KLUGMAN: That is correct, Your Honor.

6 THE COURT: Parties listed as restitutees in the
7 presentence report are conceded as being correct?

8 MR. MAAS: Yes, Your Honor.

9 THE COURT: Plus an additional \$1,000,000 as
10 indicated, and the probation officer will change the
11 presentence report to reflect that additional sum and the
12 restitutees.

13 PROBATION OFFICER: Yes, Your Honor.

14 MR. KLUGMAN: Your Honor, the probation department
15 has addresses, to the extent we were able to identify them,
16 for the victims. I guess this is the process: That probation
17 provides them to the clerk of the court or the Court's deputy
18 so to the extent money does come in, it is forwarded to the
19 right location.

20 THE COURT: That is correct. The monies will be
21 paid to the clerk who will then disburse it in proportion to
22 the amount of loss of each one of the restitutees.

23 Any objection?

24 MR. MAAS: None, Your Honor.

25 THE COURT: The entire amount is due and payable

1 forthwith. Therefore, any assets that the government can find
2 of the defendant shall be utilized for restitution in the
3 first instance.

4 MR. KLUGMAN: We do have a receiver in place. He
5 has been collecting assets. He will continue to collect
6 assets. Then when that process is completed, the receiver is
7 under the supervision of a judge in the Southern District of
8 New York. Pursuant to that court's direction, he will make a
9 distribution.

10 THE COURT: How much have you collected so far?

11 MR. MORAN: One million, Your Honor.

12 THE COURT: In due course you will make that
13 available to the clerk for distribution, is that correct?

14 MR. MORAN: Yes, Your Honor. There will be other
15 fees, but everything that comes in will go for the benefit of
16 the investors.

17 THE COURT: Will the SEC do anything to reduce the
18 amount available to the restitutees?

19 MS. BROWN: Good afternoon, Your Honor. Nancy Brown
20 with the SEC.

21 I'm not really sure I understand the question. We
22 are working in conjunction with the receiver to try to locate
23 assets. The receiver has consulted with the defendant on a
24 number of occasions, and we will try to make that happen.

25 THE COURT: Well, the SEC has independent powers.

1 MS. BROWN: Yes.

2 THE COURT: I take it you're not going to use your
3 independent powers to reduce the amount available to the
4 people who are defrauded.

5 MS. BROWN: If we sought our own penalties. Is that
6 what you're suggesting, Your Honor?

7 THE COURT: Yes.

8 MS. BROWN: We have a settlement agreement in
9 principal with the defendant that the restitution amount will
10 apply against any amounts that we would otherwise seek. So
11 yes, our intention is to return money to victims.

12 THE COURT: Thank you.

13 There will be a fine of \$20,000 but that fine will
14 not be enforced until restitution is completed. That is, all
15 assets that can be found now or in the future, and any assets
16 of the defendant in the future, will be payable to those who
17 are defrauded.

18 Is that clear and appropriate?

19 MR. MAAS: Yes, Your Honor.

20 THE COURT: The Court finds that it is appropriate
21 not to provide for the family of the defendant since his
22 children are grown, he's divorced and his children and former
23 wife have assisted or agreed to assist in his support. He's
24 capable of supporting himself, subsequently.

25 However, the garnishing of his wages will not exceed

1 50 percent.

2 MR. MAAS: Sorry, Your Honor.

3 THE COURT: Whatever is permitted under state law.

4 MR. MAAS: Did you say 50?

5 THE COURT: The garnishing of his wages, should he
6 earn anything after he's released from prison, will not exceed
7 50 percent. He'll be able to earn a living. However, should
8 he earn any substantial amounts or gain any substantial
9 amounts, the government should apply for an increase so that
10 the people who were cheated will get the maximum benefits.

11 Is that clear?

12 MR. KLUGMAN: Yes, Your Honor. I should note that
13 there are outstanding business opportunities that the
14 defendant has been discussing with the government and with the
15 receiver. And to the extent those business opportunities are
16 successful, he has agreed to provide money that comes in from
17 them to the receiver.

18 I believe there's a written agreement or is it
19 just --

20 MR. MAAS: Your Honor, just with respect to the
21 matter that Mr. Klugman just raised, Mr. Stein has been, since
22 his arrest, trying to put together opportunities to raise
23 money for the receivership.

24 There is an agreement in place with the fellow who's
25 Mr. Stein's partner in all this, that all the money, 100

1 percent of the money that would otherwise be entitled to go to
2 Mr. Stein, is going to go to the receivership.

3 THE COURT: What is the nature of this agreement?

4 MR. MAAS: Mr. Stein has been working, there have
5 been several opportunities. Some of which didn't go anywhere,
6 and a couple of which are still real. The one that's most
7 real right now is that Mr. Stein has been working to put
8 together an entity which is a seller of large quantities of
9 sugar and a foreign government that is looking to buy large
10 quantities of sugar.

11 And from that, Mr. Stein and the group of people who
12 put this deal together, would be entitled to make several
13 million dollars.

14 THE COURT: That's not going to happen.

15 MR. MAAS: I'm sorry?

16 THE COURT: That is not going to happen because he
17 is going to prison.

18 MR. MAAS: That's already been done. I mean,
19 there's been work that's been done until now.

20 THE COURT: Whatever assets he has, whatever claims
21 he has, will go to the people who are entitled to restitution.

22 MR. MAAS: Precisely.

23 THE COURT: He is not going to be in a position to
24 continue with this operation because he's going to prison.

25 MR. MAAS: Maybe I misspoke. All I was saying to

1 Your Honor is that there's an agreement in place that the
2 other partners in this have agreed that whatever they might
3 have otherwise been paying to Mr. Stein, will go to the
4 receiver.

5 I understand that once he's in prison he can't work
6 on this anymore.

7 THE COURT: Whatever assets he has, whatever is due
8 to him now and in the future, will go to the people who are
9 entitled to restitution.

10 MR. MAAS: We all agree to that. The only thing I
11 wanted the Court to know is that there is a good likelihood of
12 a stream of revenue once Mr. Stein is already in prison. That
13 will go to the receivership for the benefit of the victims.

14 THE COURT: That entire stream of revenue will go to
15 the restitution.

16 MR. MAAS: It's probably not my issue, but when Your
17 Honor says restitution, I assume that means the receiver.

18 THE COURT: Via the receiver. The receiver will
19 collect and remit -- the clerk of the court will remit to the
20 people who are entitled to restitution in proportion to the
21 amount shown on the revised presentence report and that are
22 entitled to restitution.

23 Is that correct?

24 MR. MAAS: Absolutely, Your Honor.

25 THE COURT: Supervised release. The maximum is

1 three years here, is that correct?

2 PROBATION OFFICER: On Counts One through Four. But
3 Count Five, the maximum is five years.

4 THE COURT: Five years supervised release.

5 Have you ever had a mental problem, sir?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Psychiatric treatment?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: You use illegal drugs?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Alcohol to excess?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Gamble?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: You have no guns?

16 THE DEFENDANT: I have no guns.

17 THE COURT: You will have no guns during the period
18 of supervised release. You will use no drugs illegally. You
19 will you have no relationship with criminals.

20 Probation will be entitled to enter your home at any
21 time to see that you conform to probation requirements without
22 obtaining a warrant.

23 Is there anything else Probation requires?

24 PROBATION OFFICER: We would request full financial
25 disclosure.

1 THE COURT: You will make full financial disclosures
2 as requested by Probation.

3 PROBATION OFFICER: And refraining from engaging in
4 any capacity in the securities industry, and to assist the
5 probation department in verifying the description of any job
6 that he does obtain.

7 THE COURT: You'll cooperate with Probation with
8 respect to any job you obtain. I don't think the Court may,
9 under Second Circuit decisions, prohibit the defendant from
10 involving himself in securities transactions.

11 However, the Securities and Exchange Commission, and
12 others, will take note of the situation and attempt to protect
13 the public. I think the Second Circuit's position is that the
14 Court may not inhibit the defendant from earning a living.

15 MR. KLUGMAN: We agree with Your Honor.

16 Is that in your agreement with him?

17 MR. MAAS: The defendant has entered into a partial
18 settlement with the SEC in the SEC's action that includes
19 prohibitions on Mr. Stein holding certain positions within the
20 securities industry going forward. He certainly will honor
21 that.

22 THE COURT: I understand that. But I cannot
23 institute those requirements as part of supervised release.
24 That is something outside the purview of this court.

25 Is there a limited right to appeal in the agreement?

1 MR. KLUGMAN: There is a limited, depending on the
2 sentence. There's a ceiling.

3 THE COURT: You don't have to tell me what it is.
4 Do you understand that limit, sir?

5 THE DEFENDANT: Yes I do, Your Honor.

6 THE COURT: You have explained it fully?

7 MR. MAAS: Yes, I have.

8 THE COURT: The Court takes no position on your
9 appellate rights. You will explain his appellate rights to
10 him?

11 MR. MAAS: Absolutely, Your Honor.

12 THE COURT: Any open charges?

13 MR. KLUGMAN: No, Your Honor.

14 THE COURT: The Court will hear the defense counsel
15 and the defendant under Booker and Section 3553(a) and the
16 guidelines.

17 MR. MAAS: Thank you, Your Honor.

18 All sentencings are difficult for all of the parties
19 involved. This case has been particularly difficult on many
20 levels, not the least of which is the pain that was caused by
21 Mr. Stein to the victims. And the reality of seeing them in
22 open court, I know the effect that that's had on Mr. Stein and
23 the difficulty that poses both emotionally and practically.

24 We've submitted to Your Honor, with respect to
25 sentencing, a package of materials which primarily consisted

1 of letters from 40 individuals who've known Mr. Stein, much
2 better than I have, over his life.

3 They include letters from a very supportive family,
4 all of whom are here today, his three children, their spouses,
5 his two sisters, his ex-wife who has been of great support to
6 him through this.

7 And these were people who were shocked, angered,
8 dismayed, when they learned of what Ed had been doing and the
9 position that he put everybody in, but knowing Ed as they did,
10 knowing the person that he was before he turned to the conduct
11 that brings him here, they know that at heart he's a good
12 person, and a person who has spent the bulk of his life prior
13 to this being their support, being a help to people, going out
14 of his way, working 24/7 to do good for people and good for
15 his family. They've stood by him despite both the practical
16 and emotional difficulties that it's caused.

17 The letters also included, Your Honor, letters from
18 a variety of people who've known Ed in social and business
19 contexts over the past 30 to 40 years in various
20 relationships. All of whom have advised Your Honor, in one
21 way or another, of the positive impact that Ed had on their
22 lives prior to 1998 when he began the conduct which resulted
23 in the losses here.

24 He was in business for many years prior to 1998.
25 There are many people, including those who wrote letters to

1 Your Honor, that attest to the important good work that he did
2 for them in both a business and a personal level as a person
3 who supported them and gave them counsel and advise and
4 support when they needed.

5 We've also provided to Your Honor letters from
6 several individuals who were investors in the funds and in the
7 businesses that were part of this scheme and that have lost
8 money.

9 In my experience, having done a lot of financial
10 cases, it's an unusual circumstance where people can have the
11 anger that those letters project, the disappointment that they
12 project of what Ed did with their money, and yet they still
13 have a sufficient reservoir of goodwill and a strong belief
14 that this is basically a person of character, that they know
15 took a terribly wrong turn and found himself in a situation
16 where he couldn't stop.

17 He started lying to people because he lost their
18 money and he thought he could make it back. And as happens in
19 these situations, the situation snowballed. He doesn't have
20 any idea how big its getting because he's in the middle of the
21 snowball, doesn't have any idea how big its getting because
22 he's just moving so fast to keep it going.

23 And a terrible thing happened here, but those
24 several people that have written Your Honor, some quite
25 eloquently, have told Your Honor that this is a man, whose,

1 the rest of his life -- including people who've given you
2 anecdotes of events during the ten or 11 years that he was
3 deceiving folks of circumstances where he didn't take
4 advantage of situations, where he gave wise and good counsel
5 and showed himself, the real Ed Stein still existed and still
6 came through.

7 In Your Honor's evaluation of the proper sentence in
8 this circumstance, in a situation where the guidelines would
9 project a sentence of upward of 15 years, in terms of Your
10 Honor's evaluation of the circumstances of the crime and the
11 character of the defendant, the specific and general
12 deterrents, I think those letters speak volumes about the kind
13 of person that you have in front of you, the remorse.

14 Some of the letters talk about conversations they've
15 had with Mr. Stein since his arrest. And the contrition, the
16 true contrition and remorse that he feels. He can't unring
17 the bell, except by finding the money to repay the people.
18 What he's done is done. And the issue now is what the
19 appropriate penalty for Mr. Stein is.

20 What I can add to the letters, because I can't talk
21 about Mr. Stein as a person. I didn't know him in that way.
22 I represented him prior to his arrest. What I know is sort of
23 the man that I've seen since his arrest.

24 I've seen somebody for whom this arrest was almost,
25 in an odd way, a liberation. I mean, this is somebody who

1 deceived himself so greatly and was in a situation that he
2 didn't know how to get out of. The arrest stopped, and we use
3 the term he got off the treadmill.

4 He was running in place. He had to stop, the game
5 was over. That was, essentially, an important event for Ed
6 Stein because he no longer needed to maintain the facade and
7 could confront what he done and start turning it around.

8 I can tell Your Honor that since April 1st, Ed Stein
9 has spent most of his waking hours in a conference room in my
10 firm trying to reconstruct the records of what happened, to
11 work with the U.S. Attorney's Office to come up with an agreed
12 upon restitution number.

13 And you know, because of the way these schemes work,
14 reconstructing the numbers and making sure that everybody gets
15 the amount they're entitled to isn't easy. Mr. Klugman and I
16 worked very hard. And Mr. Stein, as I say, was at our offices
17 many days to come up with the right numbers.

18 We've also worked with the receiver to try and help
19 the receiver understand the winners and the losers and
20 retrieve what assets there were. This is not a scheme, Your
21 Honor, where Mr. Stein took money out of the scheme to buy
22 mansions and boats and planes and the other accoutrements of
23 wealth and prestige that we all know other defendants in these
24 situations do.

25 Most of the money here, over the ten years, went

1 back to investors. And the receiver now has a schedule of all
2 of that that we've helped him create. All was invested in
3 businesses which were intended to generate wealth and revenue
4 for the investors.

5 Mr. Stein's basic life style didn't change over the
6 ten years. He didn't stop being an upper middle class
7 businessman that he was before. He stayed in the same house
8 until he got divorced. He rented a one bedroom apartment in
9 Manhattan.

10 Yes, he bought the condo with money that Ms. Gilson
11 mentioned, but that is the one time. Otherwise the life style
12 stays the same. That makes Mr. Stein very different from
13 other defendants who find themselves in this position. He was
14 trying, misguided, badly done, completely stupid, thinking he
15 could make back the money. But that's what this is about.

16 The other thing that I can tell Your Honor is this
17 is somebody who has worked with the same energy he worked with
18 before April 1st to try to develop business opportunities,
19 things that he'd been working on prior to April 1st, to keep
20 them in play for the sole motive of generating revenue for the
21 benefit of these investors.

22 We've talked about one of them. That is -- it may
23 not happen. I'm not guaranteeing anybody that it will happen.
24 I can only tell Your Honor the agreements that we've seen and
25 shared with the government and the receiver, they're not done.

1 Mr. Stein has played a role in getting the
2 agreements to the verge. Were he to have some time to
3 surrender, his contribution, as put forth in the letter from
4 one of the partners in this deal, would be invaluable. He's
5 also been helping the receiver to work on the fall back
6 information that they need.

7 So I've watched someone try, he can't possibly make
8 up what happened here, but he has worked, as best he can, to
9 start this process of making this up to the investors. And
10 his family, frankly. His family has been terribly hurt by
11 this. But mostly it's about the financial loss to the
12 investors.

13 There are certainly the letters from investors who
14 are angry, describing Ed Stein as predatory and asking for
15 maximum sentences. But I would ask Your Honor to consider the
16 many letters both from business associates and friends as well
17 as from other investors who, having known Ed well before 1998,
18 know this is not somebody who is predatory.

19 This is somebody who found himself in a position,
20 through weakness and other flaws, where he started lying and
21 he couldn't stop. But someone who has seen what he has done
22 and wants nothing more than to try to make it right.

23 He understand that he's going to be punished. He
24 understands he's going to jail. He's just here to ask Your
25 Honor that the sentence be one that sends the right signal,

1 but still doesn't prevent him from having an opportunity, at
2 the end of it, to be a young enough man, as it were, to make
3 this up to his family. But also, at that time, to be able to
4 do whatever he can to try to make this up to the investors.

5 So I'm asking that Your Honor, the guideline range
6 at the bottom of which is 15 years, to sentence Mr. Stein to a
7 sentence well below that 15 years. I'm not going to presume
8 to tell Your Honor what we think is appropriate. Your Honor
9 has far more experienced than I. But I don't believe that
10 this is a case where anything remotely approaching a 15 year
11 sentence is necessary for the goals of specific or general
12 deterrents. And that a sentence far below that will satisfy
13 those goals and satisfy the purposes of Section 3553.

14 Thank you, Your Honor.

15 THE COURT: Does the defendant wish to be heard?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: I will hear you.

18 THE DEFENDANT: Your Honor, I know this apology, to
19 many people here, is going to be too late and too little. I
20 certainly understand that the words that I say will never be
21 enough for the investors that I've hurt.

22 But I do want to offer my sincere apologies. I do
23 deeply regret the bad decisions that I made and the pain it's
24 caused the people that came up here and spoke today, and many
25 others.

1 11 years ago I made a very serious mistake. A
2 mistake that I alone am responsible for. At the time, instead
3 of taking full responsibility for my actions, accept the
4 failure, deflate my self image and be honest and tell the
5 truth to my clients that they had lost significant amounts of
6 money, I chose, instead, to engage in a pattern of lies over
7 the last decade to people who had entrusted me with their
8 money. And I know I caused profound harm to a number of those
9 people and their families.

10 By not dealing with the truth, putting my head in
11 the sand and thinking I could fix the problem, I hurt the
12 lives of investors who I know considered me a friend. This is
13 a very serious sin for which I failed to lived up to the
14 standards I expect of myself.

15 Again, I know words are not adequate to express the
16 remorse that I personally feel for what I've done. I know
17 what I did was a serious breach of trust. It's caused me to
18 take a painful look at my actions to make sure that nothing
19 like this can ever happen again.

20 I also, Your Honor, would like to apologize to my
21 family. I love all of them dearly. I have dedicated a great
22 deal of my life to them. I find myself having caused the
23 toughest challenge to my family. Somewhere in the last ten
24 years I lost my sense of reality with this. And as a result,
25 everyone has suffered.

1 THE COURT: Thank you.

2 The government, I take it, stands on its letter?

3 MR. KLUGMAN: I was actually going to say something
4 briefly, if I may?

5 THE COURT: Of course.

6 MR. KLUGMAN: Your Honor is correct, most of what I
7 have to say was said in my letter. I do want to say a few
8 brief things.

9 First, I just want to respond to this notion
10 advanced in Mr. Stein's sentencing papers received here today,
11 that the wrongdoing somehow was done only or even primarily to
12 repay money that was taken from its investors to make the
13 detour investment.

14 In my papers, I reference the \$1 million that was
15 stolen --

16 THE COURT: I don't quibble with that, so you don't
17 need to expand on it.

18 MR. KLUGMAN: I guess, then, let me just wrap up.

19 As indicated in my papers, I agree that Mr. Stein
20 should receive some consideration in Your Honor's
21 determination of sentence for the fact that after his arrest,
22 he did come in and help us identify victims and determine
23 their loss amounts.

24 Nevertheless, for all of the reasons stated in my
25 sentencing papers, I believe that a sentence within the

1 advisory guideline range is appropriate in this case given the
2 harm caused by this offense.

3 Through their letters and their statements here
4 today, the victims of this offense have bravely conveyed the
5 gravity of the offense in a manner far more starker and far
6 more clearly than I ever could. Many of them lost everything
7 with little hope of recovering more than pennies on the
8 dollars in restitution. They came here today seeking justice,
9 something they did not receive from Mr. Stein in the last
10 eleven years.

11 It is the government's view that a just sentence is
12 one within the guideline range given all the circumstances of
13 this case.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 Would it be useful to the receiver to have the
17 defendant available for a short time to assist in locating
18 assets before he is actually sent to prison?

19 MR. MORAN: I don't believe so, Your Honor.

20 THE COURT: You have no reason for him not to be
21 incarcerated immediately?

22 MR. MORAN: I have no reason Your Honor.

23 THE COURT: What about the SEC?

24 MS. BROWN: No, Your Honor. Thank you.

25 THE COURT: You don't have any reason to keep him

1 out of prison?

2 MS. BROWN: No, Your Honor. We can work with his
3 lawyer to finalize whatever we need to finalize in the
4 proceedings in the Southern District. Thank you.

5 THE COURT: I take it the defendant's position is he
6 wishes to be incarcerated near the New York Metropolitan area
7 so that his family can visit?

8 MR. MAAS: Actually, Your Honor, his daughter and
9 grandchildren live in North Carolina, and there is a prison
10 camp at the Butner facility in North Carolina that I would ask
11 Your Honor to recommend for Mr. Stein.

12 THE COURT: I so recommend, but I cannot guarantee
13 that.

14 MR. MAAS: We understand that.

15 THE COURT: That's for the penal authorities to
16 decide.

17 MR. MAAS: May I be heard on the issue of surrender
18 or do you want me to save that?

19 THE COURT: You ought to be heard.

20 MR. MAAS: Mr. Stein has been released on bail since
21 last April. The bail that's currently, bail package is a
22 personal recognizance bond of \$2 million secured by the homes
23 of the five people in the world who mean the most to him; his
24 sisters and his kids.

25 Were they -- were Mr. Stein not to report directly

1 to the institution as directed, they would lose their homes.
2 That would, as it was a bail package that was appropriate on
3 his initial arrest and at the time of the plea, I would ask
4 Your Honor to consider the fact that that bail will keep
5 Mr. Stein from doing anything stupid. He will surrender when
6 required.

7 As Your Honor well knows, there are many reasons
8 that a direct surrender is useful for a defendant. It allows
9 him to get his affairs in order. And defendants, despite the
10 amount of time it takes to get sentenced, rarely do all of the
11 things that need to be done.

12 Here there is work to be done that could benefit the
13 investors. That should be considered, in my opinion.

14 So here, for all those reasons, I would ask Your
15 Honor to allow Mr. Stein to surrender directly to the
16 institution. If the bail package is insufficient, if there
17 are other conditions that the Court would wish to consider,
18 obviously, that's something that would be satisfactory to the
19 defendant.

20 THE COURT: Thank you.

21 Criminal history category is one, total offense
22 level 36.

23 MR. KLUGMAN: Yes, Your Honor.

24 THE COURT: Guideline imprisonment range is 188 to
25 235 months. This case lies outside the heartland of the

1 guidelines because of its special nature. The Court has
2 considered each requirement of Section 3553(a).

3 In this case, the chief issue is one of general
4 deterrents. The general deterrents here is a serious factor.
5 This is not abhorrent behavior. It took place over a period
6 of 11 years. The defendant dealt with people that trusted
7 him. But like some of the frauds that we've had here in
8 connection with securities where the damages were done to
9 well-advised investors who are in a position to take care of
10 themselves and were not individuals known to the defendants,
11 here, the defendant looked into the eyes of people whose
12 friendship he had solicited, and knowing the disastrous effect
13 on them of stealing their assets, forged instruments, lied,
14 stole funds, and stripped them, in some cases, of all of their
15 assets and all of their dreams.

16 Specific deterrents is not required here because
17 incapacitation will effectively prevent further crimes because
18 of the defendant's age.

19 General deterrents is required. General deterrents
20 has an effect in cases such as this, because in white collar
21 crimes a defendant can calculate the cost in terms of
22 penalties and the possible benefits. Therefore, general
23 deterrents is the primary factor here and it requires a
24 sentence of nine years imprisonment.

25 It will save the government considerable time and

1 expense if the defendant self surrenders to the place of
2 incarceration; therefore, he will surrender in 30 days to the
3 designated place of incarceration.

4 Is there anything else?

5 MR. MAAS: The only thing that I would ask is, in my
6 experience, 30 days is frequently not enough for the Bureau of
7 Prison, and if we could extend that to 60 days so we don't
8 have to come back to the court and deal with whatever
9 bureaucratic issues might arise.

10 THE COURT: 30 days, but the parties may apply for
11 an extension.

12 MR. KLUGMAN: My recent experience is 30 days is
13 typically enough. Usually he's designated by then.

14 THE COURT: 30 days.

15 Are there any other statements?

16 MR. MAAS: No, Your Honor. Thank you.

17 THE COURT: Thank you very much.

18 (Whereupon the proceedings concluded.)
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U.S.A. v. EDWARD STEIN

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